



June 24, 2004

Supreme Court Issues Five New Decisions

The Supreme Court issued five decisions today — the Cheney energy task force case and four criminal sentencing cases. The *Cheney* case has received steady press coverage for the past two years. The criminal sentencing cases, taken collectively, will have a significant effect on hundreds of criminal convictions nationwide.

Each case result is summarized below. The Supreme Court is expected to decide seven more cases during the week of June 28 and then recess until October.

Cheney v. United States District Court — Energy Task Force Papers Not Ordered Released Yet; Case Remanded. The Supreme Court decided, 7-2, that it would not order Vice President Cheney to release documents associated with the National Energy Policy Development Group. Activists had sued the Vice President demanding this information, and a district court had ordered them released. The D.C. Circuit refused to block the documents' release absent an express and specific claim of executive privilege. The Supreme Court ruled that the D.C. Circuit misread the Supreme Court's executive privilege jurisprudence (in particular, the Nixon tapes case of 1974) and that the lower court should reconsider its decision. Justices Ginsburg and Souter dissented. Note that Justice Scalia's vote with the majority did not affect the result; this was the case in which he took so much public grief for declining to recuse himself.

Schiro v. Summerlin — Right to Jury Determination of Death Penalty Will Not Be Applied Retroactively During Federal Habeas Corpus Proceedings. The Supreme Court decided, 5-4, that the Ninth Circuit erred when it attempted to apply the Supreme Court's 2002 decision in *Ring v. Arizona* retroactively. The Supreme Court in *Ring* held that death penalty defendants had a constitutional right to have a jury decide their sentence. The Ninth Circuit decision in this case applied that rule retroactively and held that it applied during federal habeas corpus proceedings. The Supreme Court reversed, for reasons explained by Justice Scalia:

The right to jury trial is fundamental to our system of criminal procedure, and States are bound to enforce the Sixth Amendment's guarantees as we interpret them. But it does not follow that, when a criminal defendant has had a full trial and one round of appeals in which the State faithfully applied the Constitution as we understood it at the time, he may nevertheless continue to litigate his claims indefinitely in hopes that we will one day have a change of heart. *Ring* announced a new procedural rule that does not apply retroactively to cases already final on direct review.

Justices Stevens, Souter, Ginsburg, and Breyer dissented. Early press reports indicate that this case affects more than 100 death penalty cases in the Ninth Circuit.

Tennard v. Dretke — Court Widens Scope of Mitigating Evidence Relevant to Death Penalty Sentencing Decisions. The Court decided, 6-3, that juries must be given the means to take into account a greater quantity of “mitigation evidence” — evidence, for example, of a defendant’s mental deficiencies — during the sentencing phase of a capital trial. Over the past 15 years, the Fifth Circuit had crafted a rule for death penalty cases, which it claimed derived from the Supreme Court’s 1989 decision in *Penry v. Lynaugh*, that permitted juries to consider only “constitutionally relevant” evidence. The Supreme Court rejected that rule, reversed the Fifth Circuit, and remanded the case for further consideration. Chief Justice Rehnquist, Justice Scalia, and Justice Thomas all wrote separate dissenting opinions, largely questioning the entire body of death penalty jurisprudence that was developed in the 1980s and 1990s under the leadership of Justice O’Connor. This ruling affects a significant number of death penalty sentences in Texas.

Beard v. Banks — No Retroactive Application of Rule Requiring Unanimous Jury Findings of Mitigating Factors. In two 1988 cases (*Mills v. Maryland* and *McKoy v. North Carolina*), the Supreme Court held that a sentencing jury must be unanimous regarding the existence of any aggravating factors that are necessary for imposition of a death sentence. The Supreme Court held today that this rule of constitutional criminal procedure could not be applied retroactively. The Supreme Court concluded that its 1988 decisions in *Mills* and *McKoy* were not “watershed” changes to existing legal rules affecting “fundamental fairness.” Pursuant to a legal test announced in *Teague v. Lane* (1989), the new rules should not be applied retroactively. Justice Thomas delivered the opinion for the 5-4 Court, while Justices Stevens, Souter, Ginsburg, and Breyer dissented. According to the *Philadelphia Inquirer*, between 20 and 30 other Pennsylvania cases are affected by this ruling.

Blakely v. Washington — Affirms Right to Jury Determination of Facts that Increase a Sentence Beyond Statutory Maximum. In *Apprendi v. New Jersey* (2000), the Supreme Court held that “Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.” At the time, some Supreme Court observers called it the most important case to be decided that year because of its implications for the nation’s criminal sentencing procedures. In this case, a 5-4 majority of the Supreme Court reaffirmed this position, holding that the right to a jury trial is “no mere procedural formality, but a fundamental reservation of power in our constitutional structure.” The Court continued:

Whether the judge’s authority to impose an enhanced sentence depends on finding a specified fact (as in *Apprendi*), one of several specified facts (as in *Ring*), or any aggravating fact (as here), it remains the case that the jury’s verdict alone does not authorize the sentence. The judge acquires that authority only upon finding some additional fact.

Therefore, the Court concluded that the judge could not enhance the sentence unless the jury made that key fact-finding. Justice Scalia wrote the opinion of the Court, while Chief Justice Rehnquist and Justices O’Connor, Kennedy, and Breyer dissented.